

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

**LETTERS PATENT APPEAL NO. 489 OF 2010 IN WRIT
PETITION NO. 3871 OF 2010 (D)**

**The Agriculture Produce Market Committee, Through its
Secretary, Tq. Arvi,**

Distt. Wardha. APPELLANT

// VERSUS //

**1. Meghraj Pundlikrao Dongre,
r/o. Pipla Rehabilitation Arvi,
Tq. Arvi, Distt. Wardha.**

**2. District Deputy Registrar,
Tq. Arvi, District Wardha.**

**3. State Commissioner,
Nagpur Bench, Civil Lines,
Nagpur. RESPONDENTS**

===== **Mr. A. Desai, Adv. for the Appellant.**

A.G.P. for Respondent No.2 and 3.

===== **2**

Coram: J. P.DEVADHAR AND

A. B. CHAUDHARI, JJ.

Date of reserving the Judgment : 12.10.2010.

Date of pronouncing the judgment : 29.10.2010.

JUDGMENT (Per A. B. Chaudhari, J)

1. Heard.

2. Admit.

3. Assistant Government Pleader waives service for respondent nos. 2 and 3.

4. The instant appeal is taken up for final disposal by the consent of the learned Counsel for the rival parties.

5. The judgment and order dt. 16.8.2010 passed by the learned Single Judge of this Court in Writ Petition No. 3871 of 2010 is under challenge in the present Letters Patent Appeal. In support of the appeal, Mr. Anupam Desai, learned Counsel for the appellant made the following submissions :

a) The appellant/Agricultural Produce Market Committee, Arvi is not a 'public authority' within the meaning of Section 2 (h) of the Right to Information Act, 2005 (hereinafter referred to as "the RTI Act") and therefore, the RTI 3 Act is not applicable to the Appellant/Committee. If the Act

itself does not apply to the Committee, the question of supplying an information even under Section 2 (f) of the RTI Act does not arise and therefore, the learned Single Judge erred in dismissing the Writ Petition filed by the appellant.

b) A Single Judge of this Court in the case of

Dr.Panjabrao Deshmukh Urban Co-operative Bank, Amravati vs. State Information Commissioner, Vidarbha Region, Nagpur and Others in Writ Petition No. 5666 of 2007, decided on 13.1.2009 held that the Co-operative Bank is not a 'public authority' within the meaning of Section 2 (h) of the RTI Act. It was further held that the said bank is neither owned nor substantially financed by the State Government nor it is controlled by the State Government or the Central Government. This Court held in the said decision that the Directors of the said Cooperative Bank were not appointed by the Government nor the Government has any direct or indirect control over the functioning and management of the bank. He, therefore, submitted that the said decision has application in the instant case and the Single Judge ought to have followed the same.

6. The learned Counsel for the Appellant invited our attention to another decision dt. 1.10.2009 made by the State Information Commissioner, Amravati Bench, Amravati in Appeal No.1441 of 2008 (Jitendra Ashok Kuyre vs. First Appellate Officer and Office of the Assistant Registrar, Khamgaon and one another) wherein the APMC, Khamgaon, District Buldhana was held to be a Society which did not fall within the definition of 'public undertaking' and the said State Information Commissioner, therefore, relied upon the said decision of the Single Judge of this Court.

7. We have heard the learned Counsel for the appellant and we have also perused the impugned judgment and order, so also the judgment rendered by the learned Single Judge of this Court in Writ Petition No.5666 of 2007, dt. 13.1.2009. It is necessary to have a look at the relevant provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as "the APMC Act"). Section 2 (j) of the APMC Act reads thus :

"2 (j) 'Market Committee' or " Committee" means a committee constituted for a market area under section 11 {and includes (The Bombay Agricultural Produce Market Committee established under clause (a) of sub-section (1A) 5

(and the Divisional or Regional Market Committee declared under clause (a) of sub-section (1B) of section 13 and} a committee or committees constituted as a result or amalgamation of Market Committee or division of Market Committee under section 44}

It shows that a Market Committee means a Committee constituted u/s. 11.

8. Section 11 is contained in Chapter III of the APMC Act which reads thus :

"11. Establishment of Market Committees.

For every market area, there shall be established by the State Government a Market Committee consisting of a Chairman, a Vice-Chairman and other members and different Market Committees may be established for regulating the marketing of different kinds of agricultural produce for the same market area or any part thereof. The Market Committee shall have all such powers and discharge all such functions as are vested in it by or under this Act. "

9. Section 12 (2) reads thus :

12. Incorporation of Market Committees.

{ (1)

(2) Notwithstanding anything contained in any law for the time being in force, every Market Committee, shall, for all purposes be deemed to be a local authority}.

10. Section 13 reads thus :

13. Constitution of Market Committees.

1. Subject to the provisions of Sub-section (2), every Market Committee consists of the following (-----) members), namely :-

{(a) [fifteen agriculturists residing in the market area (being persons whose names appear in the voter's list for the concerned constituency and who are not less than twenty one years of age on the date specified, from time to time, by the Collector or the District Deputy Registrar, as the case may be, in this behalf), as specified below :-]

(I) eleven (of which, two shall be women, one shall be a person belonging to Other Backward Classes and one shall be a person belonging to De-notified Tribes (Vimukta Jatis) or Nomadic Tribes) shall be elected by members of the Managing Committees of the Agricultural Credit Societies and Multi-purpose Co-operative Societies (withing the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder), functioning in the market area :

Provided that, where the market Committee is situated in Tribal areas, one person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes as aforesaid; and

(ii) four (of which, one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a person belonging to Economically Weaker Section), shall be elected by members of village Panchayats functioning therein;]

[(b) two shall be elected by traders and commission agents, holding licenses for not less than two years to operate as such in the market area;]

[(b-1) one member shall be elected by hamals and weighmen operating as such in the market area;] (c) one shall be the Chairman of the co-operative society doing business of processing or marketing of agricultural produce in the market area [having its 8

registered office situated in the same market area] ; or in his absence a representative of the co-operative society elected by its managing committee :

Provided that, if there be more than one such Co- operative Societies in the market area, then the Chairman of any one of such Co-operative Societies or in his absence a representative, elected by the managing committees of such society;

(d) One shall be the Chairman of the Panchayats Samiti within the jurisdiction of which the market area or major portion thereof is situated of the representative elected by such Panchayat Samiti;

(e) One shall be the President or Sarpanch of the local authority (other than a Panchayat Samiti) within the jurisdiction of which the principal market is situated or the representative elected by such local authority; (f) The Deputy Registrar of Co-operative Societies of the district or his representative, who shall have no right to vote;]

(g) the Secretary of the Market Committee, who shall have no right to vote;]

[(1-a) A person who is a member of the Market Committee under clauses (c), (d) and (e) shall have right to take part in the discussions of the Committee, but shall have no right to vote at a meeting thereof.] [(1A) (a) Notwithstanding anything contained in sub-section (1) of this section or in section 4 or other provisions of this Act, the area comprising Greater Bombay and Turbhe Village in Thane Taluka of Thane 9

District [and such other area or areas as may be specified by the State Government by notification in the Official Gazette from time to time] (hereinafter referred to as "the Bombay Market area") shall be deemed to be a market area for the purposes of this Act, and the Market Committee for that area to be called by the name of the Bombay Agricultural Produce Market Committee shall, subject to the provisions of sub-section (2), consist of the following (----- members], namely :-

(i) twelve representatives of agriculturists elected by the agriculturist members of the other Agricultural Produce Market Committees in the State, [two such members] to be elected from each Revenue Division; [(ii) five representatives, elected by the traders and commission agents, holding licenses to operate as such in the Bombay market area, as specified below, ---

(A) one representative dealing in onion, potato and garlic, elected by and from amongst themselves; (B) One representative dealing in fruits, elected by and from amongst themselves;

(C) one representative dealing in vegetables, elected by and from amongst themselves;

(D) one representative dealing in food-grains, pulses, edible and non-edible oils, elected by and from amongst themselves;

(iii) one nominated representative of the Navi Mumbai Municipal Corporation;

(iv) one nominated representative of the Mumbai Municipal Corporation;

(v) one nominated representative of the Mumbai Metropolitan Region Development Authority constituted under the Mumbai Metropolitan Region Development Act, 1974;

(vi) five representatives (of which, two shall be women, one shall be a person belonging to the Scheduled Castes or Scheduled Tribes, one shall be a person belonging to the Other Backward Classes and one shall be a person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes), to be nominated by the State Government;]

(vii) the Director of Agricultural Marketing, Maharashtra State, Pune;]

[(viii) [.....]

[(ix) [.....]

(b) a person who is a member of the Market Committee under sub-clauses (iii), (iv), (v) or (vii) of clause (a), shall have a right to take part in the discussions of the Committee, but shall not have a right to vote at a meeting thereof.]

[(1B) (a) Notwithstanding anything contained in any provisions of this Act, the State Government may, by notification in the Official Gazette, declare any Agricultural Produce Market Committee to be the Divisional Market Committee for more than one districts 11

or Regional Market Committee for more than one talukas.

(b) The area specified by the State Government by notification in the Official Gazette, from time to time, shall be deemed to be market area for the purpose of this Act and the Market Committee for that area shall be called by the name as may be notified by the State Government and it shall function as the Divisional or Regional Market Committee.

(c) The Divisional or Regional Market Committee shall, subject to the provision of sub-section (2), consist of following members, namely :-

(I) two representatives of the agriculturists, elected by the agriculturist members of the Agricultural Produce Market Committee from each district included in the area of operation of the Divisional Market Committee; or

(ii) one representatives from the agriculturists elected by the agriculturist members of the Agricultural Produce Market Committee from each taluka included in the area of operation of the Regional Market Committee; or

(iii) two representatives, elected by the traders and commission agents, holding licences to operate as such in the market area;

(iv) one representative, elected by the hamals and weighmen operating as such in the market area; (v) one representative of the State Marketing Board;

(vi) one representative of the Municipal Corporation or Municipal Council functioning at the Head Quarter of the Market Committee;

[(vi-a) four representatives (of which one shall be woman, one shall be a person belonging to Scheduled Castes or Scheduled Tribes, one shall be a person belonging to the Other Backward Classes and one shall be a person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes) to be nominated by the State Government :

Provided that, where the Divisional or Regional Market Committee is situated in Tribal areas, the State Government shall nominate the person belonging to the Scheduled Tribes in place of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes;]

(vii) The Director of marketing, Maharashtra State, Pune or his representative.

(d) A person who is a member of the Market Committee under sub-clauses (v), (vi) and (vii) of clause (c) shall have a right to take part in the discussions of the Committee, but shall not have right to vote at a meeting thereof;]

(2) When a Market Committee is constituted for the first time [whether under sub-section (1) [(1A) or (1B)] all the members thereof and the Chairman and Vice-Chairman shall be nominated by the State Government :

[Provided that, the Chairman and Vice-Chairman shall be so nominated from amongst the agriculturists members.]

[Provided further that, the State Government may, if it considers expedient, instead of nominating the members of the Market Committee constituted for the first time, appoint an Administrator or the Board of Administrators, and the Administrator or the Board of Administrators, so appointed, shall, for all purposes, be considered to be the committee constituted for the first time].

11. Perusal of the above provisions shows that, in the Chapter of Constitution of Market Committees, Section 11 of the APMC Act provides for establishment of Market Committees. Section 12 (2) provides that such Market Committee shall for all purposes be deemed to be a local Authority. Needless to say that the local Authority is an institution of self-government. Section 13 opens with the words "constitution of Market Committees". Sub-section (2) of Section 13 clearly provides for constitution of a Market committee for the first time either u/s. 1, 1(A) or 1 (B) and it is significant to note that when such Market Committee is constituted for the first time, it is the State Government which nominates the entire Market Committee and its Office bearers as per the said sub-section (2). It is, thus clear that the APMC Act itself constitutes or brings 14 into existence the Market Committees by operation of the above said

provisions of the Act and to reiterate the same, it is not by registration with any Authority appointed by the Government as is found in the case of the Co-operative Societies. Thus, the Market committee is brought into existence not by virtue of an act of any person to register a Market Committee like a Society and then bring it into existence, but a Market Committee comes into existence by virtue of operation of the provisions of the APMC Act, which is the law made by State Legislature. Not only that, Section 12 (2) clearly provides that every Market Committee shall for all purposes be deemed to be a local Authority. Looked in this background, we quote the definition of "public authority", as given in Section 2 (h) of the RTI Act, which reads thus :

2 (h) : "public authority" means any authority or body or institution of self-government established or constituted -

(a) by or under the Constitution;

(b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any - (i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

12. Perusal of the above definition clearly shows that the APMC is an institution of self-government; that too, established and constituted by a law made by the State Legislature. Section 12 (2) of the APMC Act

opens with a non-obstante clause and states that every Market Committee for all purposes, be deemed to be a local authority. At this juncture, we have noticed the Judgment of the Hon'ble Apex Court in the case of APMC, Narela .vs. CIT and another, [2008] 305 ITR 1 (SC), in which it is held that explanation to Section 10 (20) of the Income Tax Act, 1961 as amended by the Finance Act, 2002 does not cover APMC and hence, is not entitled to exemption. We thus find that there is clear distinguishing feature in not treating APMC as a 'local authority' under Income Tax Act. But, by virtue of Section 12 (2) of the APMC Act, the Agricultural Produce Market Committee will fall within the meaning of 'local authority' and consequently, under Section 2 (h) of the RTI Act, 2005. Insofar as the decision of the State Information Commissioner, Amravati Bench, Amravati is concerned, we find that the said Commissioner clearly erred in treating a Market Committee under APMC Act and Co-operative Society under the Maharashtra Co-operative Societies Act, 1960 as one and the same thing. The Learned Commissioner also erred in holding that the Khamgaon APMC is a Society and following the decision of the Single Judge of this Court delivered in Writ Petition No. 5666 of 2007 (cited supra) in respect of Co-operative Society, he wrongly held that the RTI Act will not apply to

Khamgaon APMC. The decision recorded by the said Commissioner is thus illegal.

13. We find that the judgment in the case of Dr.Punjabrao Deshmukh Urban Co-operative Bank Ltd. (cited supra) dt. 13.1.2009 was in relation to a Co-operative Society/bank and therefore, it cannot be made applicable to a case relating to the Market Committee under the APMC Act.

14. We, thus, hold that the appellant/Market Committee is established and constituted as an institution of self-government and is a local Authority and by law made by the State Legislature. Consequently, the provisions of the RTI Act do apply to the appellant/APMC. Before parting with the judgment, looking to the increase in number of scams in the Co-operative Credit Societies, Urban and Other Co-operative banks due to frauds played by the persons within the Society or the bank causing severe losses to the poor depositors and since the money of the 17 depositors is involved in such Societies/banks, it would be far better to cover all the Co-operative Credit Societies/banks etc. under the RTI Act. We recommend accordingly to the Central Government. In the result, we find no merit in the present appeal. Hence, the L.P.A. is dismissed.

15. Copy of this Judgment be forwarded to the Ministry of Law and

Justice, New Delhi, for information.

JUDGE JUDGE

jaiswal